Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified	)	CC Docket No. 01-92
Intercarrier Compensation Regime	)	
	)	

To: The Commission

REPLY COMMENTS OF ARCH WIRELESS, INC.

I. Introduction and Summary

Arch Wireless, Inc. ("Arch"), a national provider of paging and messaging services, hereby submits reply comments in the above-captioned proceeding. Arch understands the Commission's desire in this proceeding to identify a "unified" approach to intercarrier compensation,[1] and agrees that "[t]here should be only rational distinctions based on real differences in technology or law."[2] Within this framework, however, Arch submits that paging carriers do, indeed, possess unique characteristics that would leave them at a competitive disadvantage under a bill-and-keep regime. Arch accordingly urges the Commission not to impose a bill-and-keep methodology on the paging industry, but rather to retain the existing calling party's network pays (CPNP) regime for paging carriers, with certain improvements and modifications to prevent and correct market failures.[3]

II. Paging Carriers Will Be Uniquely Harmed by a Bill-and-Keep Regime

In the Notice, the Commission expressed the opinion that bill-and-keep arrangements may be consistent with the Telecommunications Act in circumstances when traffic is not in

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1 *Notice* at para. 2.
2 Verizon comments at 3.
3 In general, Arch concurs in the initial comments filed by the Personal Communications Industry Ass'n (PCIA) in this proceeding on August 21, 2001.

balance, but provided no justification for this assertion.[4] This is not surprising, as no basis exists in the statute for this position.[5]

Section 251(b)(5) requires all LECs to establish "*reciprocal*" compensation arrangements for the transport and termination of traffic. To be considered "reasonable," incumbent LECs' transport and termination terms must provide for the "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of *calls that originate on the network facilities of the other carrier*."[6] Thus, at least with respect to incumbent LECs, the statute codifies a CPNP system in which mutual compensation is required.

Congress contemplated that bill-and-keep arrangements might sometimes be reasonable, but only where they involved traffic flowing in both directions between carriers. The statute states that the reciprocal compensation framework is not meant to "preclude arrangements that afford the *mutual* recovery of costs through the offsetting of *reciprocal* obligations, including arrangements that waive *mutual* recovery (such as bill-and-keep arrangements)."[7] The legislative history reflects that the requirement of "mutual and reciprocal recovery of costs" permits a "range of compensation schemes, such as *in-kind exchange* of traffic without cash payment (known as bill-and-keep arrangements)."[8] Thus, Congress contemplated that bill-and-keep would only be permissible where benefits from the arrangement flowed in both directions – that is, where there was some *mutual exchange* of traffic.

That is rarely the case for paging carriers. Paging carriers do not typically originate traffic; they only terminate traffic that originates on other carriers' networks. The statute does

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4 *Notice* at paras. 75-76.

5 The Commission has recognized this previously in its analysis of bill-and-keep. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report & Order, 15 FCC Rcd 15499, 16055 (1996) (*"First Interconnection Order")*.

6 47 USC § 252(d)(2)(A)(i) (emphasis added)

7 47 USC § 252(d)(2)(B)(i) (emphasis added).

8 S. Rep. No. 230, 104th Cong., 2nd Sess. 125 (1996), *reprinted at* A&P S. Rep. 104-230, 125 (1996) (emphasis added).

not contemplate that bill-and-keep would be permitted in this context, because there is no exchange of traffic, and no mutuality of benefit. If bill-and-keep were adopted for paging carriers, incumbent LECs (and other carriers) would be permitted to terminate their traffic on paging networks without compensating the paging carrier, in violation of the requirement that carriers receive recovery "of costs associated with the transport and termination . . . of calls that originate on the network facilities of [an]other carrier."[9]

Not only would such a result violate the statute, it would be bad policy as well. Bill-and-keep does not make sense in the paging context under any theoretical rationale. The NPRM generally introduces a new policy basis for bill-and-keep[10] -- that is, bill-and-keep is appropriate because all carriers involved in a call benefit from the completion of the call, such that no one carrier should have to compensate the other for its role in completing a call. This theory, however, does not support the application of bill-and-keep to paging carriers.

Although paging carriers may benefit from the termination of a page, bill-and-keep leaves paging carriers in an inferior position to other telecommunications carriers under the same regime. When a telephony customer places a call to a paging customer, it may be true that the paging carrier and the telephone carrier (and their customers) both receive a benefit from the completion of the page. But the situation is different than the situation when telephony providers terminate each other's traffic. Telephony carriers receive a service from one another – the ability to complete calls on *each other's* networks – that paging carriers simply do not receive. Thus, while paging carriers may receive some benefit from telephone carriers' ability to complete calls over their networks, the benefit is never reciprocal, and therefore never equal. It is always *less* than the benefit telephony providers receive from each other under a bill-and-keep regime. As a

[9] 47 USC § 252(d)(2)(A)(i).
[10] *See Notice* at para. 37.

result, paging carriers would be placed at an impermissible disadvantage by a bill-and-keep regime.[11]

It is important to note that this unique quality of paging networks – the ability to receive traffic but not to originate it – does not mean that the continued application of CPNP would be in any way unfair. For example, Home Telephone Company identifies as a "problem" with the existing CPNP system the fact that "the existing rule requires a LEC to provide services and facilities to a paging carrier and perhaps also pay for terminating calls."[12] This is far from a "problem," however. Paging carriers pay for interconnection in the same way all other carriers pay. They must pay for their share of interconnection facilities, for example. And, although paging carriers do not end up owing other carriers for terminating their traffic, this is because paging carriers do not originate traffic – they do not receive this service from other carriers, and thus it is reasonable that they should not pay for it. In contrast, they provide a termination service to other carriers and, like other carriers, should be compensated for it.

The misguided application of bill-and-keep to the paging industry would be all the more troubling in light of the history of paging carriers' struggle to receive the compensation to which they are entitled. As the Commission is well aware, at the time of the industry's inception, while landline carriers operated under a well-established CPNP regime, paging carriers were required to pay to *receive* traffic (as well as for telephone numbers and for interconnection facilities). Even once the Commission made clear that paging carriers, like all carriers, were entitled to compensation for terminating other carriers' traffic, paging carriers struggled for years to force LECs to comply with the rules.[13] The struggle continues, but paging carriers have at least begun

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[11] USTA argues that an "easier case may be made for the implementation of bill and keep for all identifiably one way traffic, such as paging." USTA comments at 30. USTA does not explain this assertion, which, as Arch argues herein, is directly contrary to logic.

[12] Home Tel. Co. comments at 10-11.

[13] *See, e.g., First Interconnection Order*, 11 FCC Rcd at 16252-53 (Separate Statement of Comr. Chong, concurring) ("CMRS providers have suffered past discrimination at the hand of the LECs and

to receive fair compensation for completing other carriers' traffic.[14] Now the Commission proposes, in one sweeping move, to eliminate these hard-earned rights.

Arch understands the Commission's desire to move towards a unified approach to intercarrier compensation, and believes that a bill-and-keep approach may, in certain circumstances, be well suited to achieve that goal. Arch urges the Commission, however, to recognize the unique nature of the paging industry and not impose a "one-size-fits-all" approach where it is not appropriate.

III. The Commission's Intercarrier Compensation Regime Should Treat All Carriers Fairly

In attempting to reform the intercarrier compensation regime, the Commission should be mindful of its responsibility not to pick winners and losers in the marketplace. The Commission's role is to craft policies that favor competition, but do not favor or disfavor any particular competitors. As described above, adoption of a bill-and-keep regime would unfairly disadvantage the paging industry compared to other types of carriers in the marketplace.

It is always tragic when hastily-crafted regulatory policy threatens the viability of otherwise sound businesses, but it would be particularly unfortunate in this instance. The paging industry is in the midst of a period of profound change, and existing carriers are working to solidify their market niche.

Paging carriers provide a valuable service that is different from other mobile services. Although the paging industry has, in recent years, lost subscribers to wireless telephony

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by certain state commissions with regard to interconnection matters. Today's record is replete with examples of LECs that have significantly overcharged CMRS providers for past interconnection. Further, in violation of our rules, our record reflects that in some cases, LECs have refused to pay CMRS providers for calls terminated by LECs on the CMRS networks, while other wireline carriers have received such compensation from the LECs. In other instances, LECs have required certain CMRS providers to pay for the traffic the LEC carrier originates and terminates on the systems of the CMRS provider. These problems have been compounded by certain state commissions who have limited access by CMRS providers to more reasonable interconnection rates afforded by LECs to other wireline carriers").

[14] *See*, *e.g.*, Allied Personal Communications Industry Ass'n comments at 1-2.

providers as the price of wireless telephony has fallen, there is a core market for paging services that is separate and distinct from the market for wireless telephony. There are types of applications for which paging services are better suited. For example, paging technology is cost effective and more reliable than wireless telephony, and paging frequencies penetrate buildings and other obstructions better than other wireless frequency bands. As a result, paging services are better suited in situations where simple messages must be communicated very reliably to certain individuals. Examples include summoning hospital personnel, construction crews, or emergency workers. Despite the falling price of wireless telephony, the simplicity of the paging technology will always make paging the low-cost alternative in situations where only a messaging service is needed. In addition, the growing market for two-way messaging is showing that paging carriers can be a useful mobile link to the Internet.

Thus, it would be particularly unfortunate for the Commission to adopt a regulatory approach, like bill-and-keep, that so unfairly impacts the paging industry because of its unique qualities. If the Commission adopts bill-and-keep, it will not be adopting a neutral policy of general application; it will be adopting a policy that unfairly places the paging industry at a distinct disadvantage – and does so at a crucial juncture in the industry's development. It is hard to imagine a more profound and unfortunate application of regulatory power.

IV. Requiring Paging Carriers to Interconnect with LECs in Every Rate Center is Inefficient

The NPRM sought comment on whether there should be a requirement to pay compensation for transport of traffic outside the local calling area when a carrier establishes a single point of interconnection (POI) in a LATA.[15] The NPRM appears to address this issue

[15] Notice at paras. 112-113.

primarily from the CLEC perspective, and ILECs commenting on the issue focused on CLEC issues as well.[16]

It is important to note, however, that the statute gives carriers, including paging carriers, the right to interconnect with the LECs' networks "at any technically feasible point."[17] For purposes of traffic to and from CMRS carriers, including paging carriers, the local calling area is the MTA.[18] Thus, when a CMRS carrier interconnects with a LEC at at least one point in the MTA, there is no instance where the LEC will be required to deliver "non-local" traffic to the CMRS carrier. Therefore, CMRS carriers should not be required to maintain more than one POI per MTA (or per LATA, where the MTA crosses LATA boundaries).[19] Nor should the Commission accede to some commenters' requests that it roll back the clock and let state PUCs establish local calling areas for CMRS carriers.[20] The Commission's decision to establish a uniform definition of local traffic for CMRS carriers is sound and consistent with section 332(c), particularly given the rise of wide-area "local" calling plans among wireless carriers. There is no reason for incumbent LECs to be allowed to impose their local calling areas on other carriers' traffic.

As PCIA correctly described in its comments, the current rule is fair and efficient.[21] It properly recognizes the architecture of CMRS networks, which are generally licensed, and therefore constructed, on an MTA basis. It precludes the ILECs from requiring CMRS carriers inefficiently to reproduce the ILEC network.

It is also important to note that some LECs' complaints about CLECs' use of "virtual NXXs" to avoid toll rates do not apply to CRMS carriers. CMRS carriers, including paging

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16 *See, e.g.*, SBC comments at 18; Verizon Comments at 4.
17 47 USC § 251(c)(2)(B).
18 47 CFR § 51.701(b)(2).
19 Arch has consistently recognized the restrictions on ILEC carriage of interLATA traffic, and has established POIs in each LATA where the MTA crosses LATA boundaries. *See* 47 USC § 271.
20 *See, e.g.*, Michigan Exchange Carrier Ass'n comments at 32; Ronan Tel. Co. comments at 9.
21 PCIA comments at 28-33.

carriers, only interconnect at efficient points, but have radio facilities and provide service to customers in every rate center in which they use numbers. As Allied described in its comments, a "variety of statutory provisions protects against abuse by CMRS carriers of their current rating and routing flexibility."[22] The Commission should avoid trying to solve a problem that does not exist.

The Commission should retain the current rule allowing CMRS carriers, including paging carriers, to interconnect with the ILECs at a single point in the LATA.

V. CMRS Carriers, Including Paging Carriers, Should be Permitted to Collect Access Charges

The Commission stated in the Notice that it "does not expect to extend compensation rules to other interconnection arrangements that are not currently subject to rate regulation and that do not exhibit symptoms of market failure"[23] such as IXC-to-CMRS arrangements. As a number of carriers have pointed out, however, CMRS carriers, including paging carriers, currently are unjustly precluded from collecting access charges because of market failures created by shortcomings in the Commission's existing rules.

The Commission's rules prohibit CMRS carriers from filing access tariffs.[24] As the Commission has made clear, carriers are not at liberty to refuse to terminate another carrier's traffic.[25] As a result, interexchange carriers (IXCs) have no incentive to negotiate with CMRS carriers to establish access rates.

This clearly is unfair, given that other carriers that terminate interexchange traffic receive compensation from IXCs for doing so. Nor is it relevant that paging carriers, like other CMRS carriers, charge their customers for terminating traffic as well as originating traffic. The

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[22] Allied Personal Communications Industry Ass'n comments at 17.
[23] *Notice* at para. 2.
[24] 47 CFR § 20.15(c).
[25] *See, e.g., AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, Declaratory Ruling, FCC 01-313 (rel. Oct. 22, 2001) at paras. 13-14.

Commission has specifically held in the reciprocal compensation context, and the same argument applies in the access context – "a cellular carrier's subscriber rates, or the costs recovered, are not germane to the issue of mutual compensation arrangements between co-carriers."[26] This arrangement also makes economic sense. The radio networks that CMRS carriers, including paging carriers, use to terminate traffic are much more usage-sensitive than the fixed facilities that landline carriers use; thus, it makes economic sense to price the service on a usage-sensitive basis, whether the calls are incoming or outgoing. This does not change the paging carrier's right to compensation.

Moreover, requiring paging carriers to "exchange" traffic with IXCs on a bill-and-keep basis would be unfair for the same reasons that bill-and-keep would be unfair to paging carriers for local traffic[27] – paging carriers only terminate traffic; they do not originate it. Thus, paging carriers would be unfairly disadvantaged by a bill-and-keep regime for interstate access.

To ensure appropriate compensation for paging carriers for terminating interexchange traffic, the Commission should permit paging carriers to assess access charges. In this regard, the Commission also should address the current lack of bargaining power that paging and other CMRS carriers have with respect to access charges. In this regard, the Commission could establish benchmark access rates that would apply for CMRS carriers unless and until the carriers had negotiated different access rates.

CONCLUSION

The Commission has stated that it is "particularly interested in identifying a unified approach to intercarrier compensation – one that would apply to interconnection arrangements between all types of carriers interconnecting with the local telephone network, and to all types of

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[26] *Cellular Interconnection Reconsideration Order*, 4 FCC Rcd 2369, 2373 at para. 27 (1989).
[27] *See supra* section II.

traffic passing over the local telephone network."[28] All carriers are not the same, however. Paging networks are unique in that they primarily terminate, and do not originate, traffic. Thus, paging carriers provide termination services to other carriers but receive no termination services in return. Applying a single compensation methodology – especially bill-and-keep – to all types of traffic would have a disproportionate and adverse impact on the paging industry, particularly at this point in the industry's development.

The Commission should continue to require other carriers to compensate paging carriers for terminating their traffic on paging networks, and should clarify that IXCs, also, must compensate paging carriers for terminating interexchange traffic. Also, the Commission should continue to allow CMRS carriers, including paging carriers, to maintain a single POI per LATA to avoid the construction or purchase of inefficient and unnecessary facilities.

Respectfully submitted,

By: _____

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[28] *Notice* at para. 2.